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IN THE

Supreme Court of the United States

October Term, 1941

No. **1009**

Office - Supreme Court, U. S.

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ADRIANO MERLANO BERSIA, CARLO NOVELLA,
ERNESTO VIANI, GIUSEPPE PRATALONGO, GIU-
SEPPE CARTA, ERNESTO BENEDETTI, SEVE-
RINO ENRICO alias ENRICO SEVERINO, PLACIDO
FRISONE, GIUSEPPE SICCARDI and ANGELO
NAPOLI,

Petitioners,

AGAINST

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI AND
SUPPORTING BRIEF**

HOMER L. LOOMIS,

Counsel for Appellants.

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IN THE
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October Term, 1941

No.....

ADRIANO MERLANO BERSIA, CARLO NOVELLA, ERNESTO VIANI,
GIUSEPPE PRATALONGO, GIUSEPPE CARTA, ERNESTO BENE-
DETTI, SEVERINO ENRICO alias ENRICO SEVERINO, PLACIDO
FRISONE, GIUSEPPE SICCARDI and ANGELO NAPOLI,

Petitioners,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate
Justices of the United States Supreme Court:

The petition of Adriano Merlano Bersia, Carlo Novella,
Ernesto Viani, Giuseppe Pratalongo, Giuseppe Carta,
Ernesto Benedetti, Severino Enrico alias Enrico Severino,
Placido Frisone, Giuseppe Siccardi and Angelo Napoli re-
spectfully alleges and propounds as follows:

A.

Summary Statement of Matter Involved.

1.

Your petitioners are mariners, to wit, respectively, the
master, the chief engineer, the second engineer and various
seamen of the motorship Villarperosa, who were,—until
seized, removed from their vessel and confined, on the 30th
day of March, 1941, as hereinafter narrated,—attached to
and living aboard that vessel, with the other members of her
crew; the said steamer Villarperosa then being of Italian
register, flying the Italian flag and laid up at dead anchor-

age in the Port of Wilmington, North Carolina, for the duration of the war between Italy and Great Britain.

2.

Your petitioners were indicted, tried and convicted, after trial by jury, in the United States District Court for the Eastern District of North Carolina on the charge of *tampering* with the motive power and navigational appliances of their said steamer while she was at dead anchorage as aforesaid in the month of March, 1941, and your petitioners have been sentenced to imprisonment in a federal penitentiary for terms of three years in the cases of Adriano Merlano Bersia, the Master, and Carlo Novella, Chief Engineer, and terms of one year and six months in the case of the other petitioners.

3.

The proofs showed that your petitioners, in doing what they did, were acting pursuant to the orders both of the owner of the vessel and the Italian naval authorities; failed to show that they were acting for any purpose other than to place their vessel in such a condition that, if she should fall into the hands of their country's enemy, she could not be beneficially used by that enemy for a long time to come and, then, only after the execution of extensive repairs at great expense; and failed to show that your petitioners knew of, or intended to violate, any law of the United States prohibiting their doing what they respectively did.

The proofs further show that, shortly following the dismantling of the said machinery in the engine room of their said steamer, your petitioners were forcibly removed from their steamer by United States Coast Guard officers on or about the thirtieth day of March, 1941, and have been kept in confinement ever since.

4.

Your petitioners appealed from the said judgments of conviction and imprisonment to the United States Cir-

cuit Court of Appeals for the Fourth Circuit, which, however, on December 26, 1941, entered a judgment affirming the judgments entered below, and on January 31, 1942, denied your petitioners' timely application for a rehearing.

5.

Petitioners feel aggrieved and complain of the proceedings had below for the following reasons:

a.

The application to the petitioners of Title 3 of the Act of June 15, 1917, c. 30, Title III, 40 Stat. 221, (18 U. S. C. A. Sec. 502), though what they did was done:

- (1) With the consent and approval,—and at the instance of, the owner of their vessel;
- (2) Without involving any trespass on or wrong to, the person or property of another;
- (3) To the machinery of a laid-up ship not engaged in foreign commerce;
- (4) Without any criminal intent; and
- (5) Without any intent to imperil or undermine the safety of their steamer.

(Assignments of Error 4th, pr. rec. 72-73; 5th, 75; 7th, 75; 8th and 9th, 76; 10th and 11th, 76-77; 12th and 13th, 77-78; 14th, 79; 16th, 79-80; 17th and 18th, 80-81; 19th and 20th, 81; 22nd, 82-84; and 23rd, 84).*

b.

The failure of the Circuit Court of Appeals to hold that the petitioners' demurrer to the indictment, as charging no crime punishable under the laws of the United States, should have been sustained and the judgments reversed because:

- (1) The indictment failed to allege the possessor-ownership of the vessel to be in someone other than

*These and similar notations refer to the pages of the printed record filed with this petition.

the petitioners or those at whose instance they acted;

(2) The indictment failed to allege that the vessels were engaged in foreign commerce; and

(3) The indictment depended for its validity upon a construction of the statute, that, if permissible, rendered the statute unconstitutional.

(Assignments of Error, 1st and 2nd, pr. rec. 65, 66-69; 22nd, 82-84; and 23rd, 84).

c.

The failure of the Circuit Court of Appeals to hold that the trial judge should have directed a verdict of "not guilty" on the evidence, as being insufficient to warrant a verdict of guilty against these petitioners, and to reverse the judgments below accordingly because:

(1) The proofs did not reasonably tend to show that the acts complained of involved a trespass by petitioners upon the property of others or were done without the owner's cognizance, consent and approval;

(2) The proofs did not reasonably tend to show the vessel to have been engaged in foreign commerce;

(3) The proofs did not reasonably tend to show the acts complained of to have been accompanied by any malice or criminal intent as charged in the indictment; and

(4) The proofs did not reasonably tend to show that the acts complained of were done with an intent to injure or endanger the *safety* of the vessel within the language of the statute.

(Assignments of Error, 4th pr. rec., 72-75; 5th, 75; 8th and 9th, 76; 10th and 11th, 76-77; 14th, 79; 18th, 80; 19th, 81; and 23rd, 84).

d.

The denial of petitioners' right to have the jury instructed:

(1) That the statute had no application to the

petitioners' acts, if those acts were done with the cognizance, consent and approval of the owner of the *Villarperosa*;

(2) That the statute had no application to the petitioners' acts, unless the vessel was engaged in foreign commerce;

(3) That before the petitioners could be found guilty the jury were required to be satisfied beyond a reasonable doubt that, in doing what they did, they were acting with a purpose to commit a wrong against some other person or his property or knew of the statute and intended to violate it.

(Assignments of Error, 7th, pr. rec. 75; 8th, 9th and 10th, 76-77; 11th, 12th and 13th, 77-78; 14th, 79; 16th, 17th and 18th, 79-80; 19th and 20th, 81; and 23rd, 84).

e.

The denial of the petitioners' right to have the judgment of the trial court arrested pursuant to the motion therefor seasonably made by the petitioners for the errors committed as hereinbefore noted.

(Assignments of Error, 22nd, pr. rec. 82-84; and 23rd, 84).

B.

Reasons Relied on for Allowance of Writ.

The reasons relied on by your petitioners for an allowance of the writ herein prayed for are that the Circuit Court of Appeals for the Fourth Circuit has:

1. Rendered a decision in conflict with the Fifth Amendment to the Constitution of the United States and the general current of authority in other Anglo-Saxon jurisdictions;

2. Decided important questions of general law in a way untenable and in conflict with the general current of authority;

3. Decided important questions of federal law that have not been but should be settled by this Court;

4. Decided federal questions in a way that conflicts with the Fifth amendment to the Constitution of the United States, the applicable decisions of this Court and the judicial history of federal statutes *in pari materia*; and

5. So far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by the United States District Court for the Eastern District of North Carolina, as to call for the exercise of this Court's power of supervision.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Fourth Circuit should be granted.

ADRIANO MERLANO BERSIA,

CARLO NOVELLA,

ERNESTO VIANI,

GIUSEPPE PRATALONGO,

GIUSEPPE CARTA,

ERNESTO BENEDETTI,

SEVERINO ENRICO,

PLACIDO FRISONE,

GIUSEPPE SICCARDI,

ANGELO NAPOLI.

State of Florida,
County of Leon.

Adriano Merlano Bersia, Carlo Novella, Ernesto Viani, Giuseppe Pratalongo, Giuseppe Carta, Ernesto Benedetti, Severino Enrico alias Enrico Severino, Placida Frisone, Giuseppe Siccardi and Angelo Napoli, being duly sworn, depose and say respectively that they are familiar with the contents of the foregoing petition and that the same is true to the best of their knowledge, information and belief.

ADRIANO MERLANO BERSIA,
CARLO NOVELLA,
ERNESTO VIANI,
GIUSEPPE PRATALONGO,
GIUSEPPE CARTA,
ERNESTO BENEDETTI,
SEVERINO ENRICO,
PLACIDO FRISONE,
GIUSEPPE SICCARDI,
ANGELO NAPOLI,

Subscribed and sworn to
before me this *2nd* day of March, 1942.

T. M. DEAN,
Notary Public,
State of Florida at large.
My commission expires October 2nd, 1945.
Bonded by the American Surety Co.

I certify that I have read the foregoing petition and that it sets forth in my opinion a proper case for the granting of a writ of certiorari and is not filed for purpose of delay.

HOMER L. LOOMIS,
Counsel for Petitioners.